

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

AUGUST 9, 2005

President Bob Arrington called the meeting to order at 10:00 A.M. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Bob Arrington, President, Danny Cook, Vice President, Ralph Buckner, Jr., Bob Foster, Wendy Hellum, and Stephen Murphy. Absent was Nancy Vincent.

Staff members present were Robert Gribble, Executive Director, Ernest Sykes, Jr., Legal Counsel, Bill Luna, Jimmy Kesey and Roy Bozeman, Field Representatives, Sandra Cooper and Jimmy Gossett Administrative Assistants.

APPROVAL OF MINUTES:

MOTION: A motion was made by Mr. Buckner to approve the minutes of the March 8, 2005 board meeting.

Seconded by Mr. Cook

Adopted by voice vote

MOTION: A motion was made by Mr. Buckner to approve the minutes of the April 12, 2005 board meeting.

Seconded by Mr. Cook

Adopted by voice vote

COMPLAINT HANDLING – STANDARD OPERATING PROCEDURES:

JODY STONE, CONSUMER OMBUDSMAN

DEPARTMENT OF COMMERCE AND INSURANCE

DIVISION OF REGULATORY BOARDS

ONLINE RENEWAL OF LICENSES:

MEREDITH SULLIVAN, CHIEF POLICY COORDINATOR

DEPARTMENT OF COMMERCE & INSURANCE

APPROVAL OF FUNERAL DIRECTOR AND/OR EMBALMER LICENSES:

Upon motion, based upon the application records, the following applicants were approved for licensure.

**Shirley Jane Mercer
Greeneville, TN**

Funeral Director

Donald Ray Musick Chattanooga, TN	Funeral Director
Brandi Elizabeth Ray Chapel Hill, TN	Funeral Director
Amon Edward Reed Knoxville, TN	Funeral Director
Earl James Smith Maynardville, TN	Funeral Director
Daniel Glenn Hurt Clarksville, TN	Funeral Director Reciprocity from Kentucky
Freddie Lee Cross Blountville, TN	Embalmer
Jeffery Lynn Walden Manchester, TN	Embalmer
John Charles Hudson Murfreesboro, TN	Funeral Director/Embalmer
Steven Chase Williams Chattanooga, TN	Funeral Director/Embalmer
Todd Randall Howell Murfreesboro, TN	Funeral Director/Embalmer
Brian Andrew Daniel Jefferson City, TN	Funeral Director/Embalmer Reapplication

APPROVAL OF ESTABLISHMENT LICENSES: Upon motion, based upon the application records, the following applicants were approved for licensure.

Crest Lawn Funeral Home and Cremation Center Cookeville, TN	Name Change Ownership: Partnership
Legacy Funeral Home and Cremation Center, Inc. Soddy-Daisy, TN	Name Change Ownership: Corporation

Northridge Woodhaven Funeral Home Millington, TN	Name Change Ownership: Corporation
Arrington Crematory Jackson, TN	Change of Ownership Ownership: Corporation
Arrington Funeral Directors Jackson, TN	Change of Ownership/Name Change Ownership: Corporation
Forest Lawn Funeral Home Goodlettsville, TN	Change of Ownership Ownership: Corporation
George A. Smith & Sons Funeral Home Jackson, TN	Change of Ownership Ownership: Corporation
Hibbett & Hailey Funeral Home Nashville, TN	Change of Ownership Ownership: Corporation
Woodall-Anderson & Dugger Funeral Home & Cremation Services	Change of Ownership/Name Change Ownership: LLC

LEGAL REPORT:
ERNEST SYKES, JR., STAFF ATTORNEY

1. L05-FUN-RBS-2005021881

This complaint involves alleged commingling of fetal cremains with those of one or more adults. Respondent FH did not contract with parents of the dead fetus, but performed the cremation for a different FH upon referral. Investigation has revealed several possible violations on the part of this FH – the one that performed the cremation – including but not limited to the commingling of remains; unlicensed practice; lack of proper identification tags; and unprofessional conduct.

Recommendation: Formal hearing

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

2. L05-FUN-RBS-2005025031

Complainant made pre-need arrangements at Respondent FH shortly before her mother's death. She alleges that the insurance company, which paid a portion of her mother's life insurance proceeds directly to FH, overpaid the FH some \$5,000 for the agreed-upon services.

Complainant alleges that when she inquired about that overpayment, FH told her it had withheld disclosing certain charges to her at the request of her pastor (who wanted to protect Complainant from additional stress at emotional time). Complainant alleges that FH then proceeded to try to obligate her for "old debts" still owing to FH for the 2003 funeral of her step-father. Complainant had no knowledge of such debts and never authorized the use of her mother's life insurance for such purpose. She alleges that FH pressured her to pay some \$5,000 for supposed debts owed for her step-father's funeral services. The evidence in our file supports Complainant's contention that she was sent one pre-need contract for a total of \$11,356 and her mother's insurance company was sent a different pre-need contract – also bearing her signature – which included as an itemized listing her step-father's services, the total amount of that (different) contract being \$16,055.

FH's response basically concedes the scenario described by Complainant. The response states that in charging the extra amount for the step-father's 2003 funeral, it was following the prior verbal instructions of Complainant's mother, the decedent. FH does not claim to have notified Complainant of any dealings it may have had with Complainant's now-deceased mother about this matter. The FH does not address the allegation that it fraudulently modified the pre-need contract before sending it to the insurance company, nor does it address a related allegation that it fraudulently modified a power of attorney signed by Complainant in order to guarantee the release of \$16,055 from the insurance company.

The file materials in our possession suggest that Respondent FH perpetrated fraud and in so doing violated the funeral laws of this State.

Recommendation: Consent Order assessing a \$3,000 civil penalty.

A motion was made by Mr. Buckner to assess a \$5,000 civil penalty.

Seconded by Mr. Murphy

Adopted by voice vote

3. L05-FUN-RBS-2005024831

This complaint is the result of an inspector's notice of violation which alleges that FH conducted a funeral and made funeral arrangements with a client when no funeral director was present. Funeral director admits not being present for a

client meeting at which funeral arrangements were made, but says he was late because of an unavoidable doctor's appointment that ran long. Apprentice FD handled the meeting in FD's stead, and FD asserts that he was back at the FH before the meeting ended.

FH did not respond to the allegation that it conducted a funeral without a licensed FD, and the evidence suggests that this FH has in fact been operating without a licensed funeral director.

Recommendation: Consent Order assessing a \$2,000 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

4. L05-FUN-RBS-2005025421

This complaint is the result of an inspector's notice of violation which alleges that FH failed to provide the statutorily required crematory disclosures, the FH's written receipt for cremation remains were missing from several files, that the FH's crematory needed general cleaning, and that two unlicensed employees had signed cremation records on behalf of the FH.

FH closed the crematory on the same date that the notice of violation was issued. It noted that it had earlier discontinued use of old authorization forms that did not have a place for the name and address of the crematory. It provided copies of the written receipts that the inspector had been unable to find, noting that they had been misfiled, and it noted that the unlicensed signatories to the cremation records were FD apprentices who had been working under the supervision of a licensed FD. Those self-corrective actions – particularly the closure of the crematory – should mitigate the penalty in this case.

Recommendation: Consent Order assessing a \$1,000 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

5. L05-FUN-RBS-2005004741

Complainant, wife of decedent, alleged that FH repeatedly failed to get her husband's obituary correct, that she did not receive an itemized statement for the

services prior to the funeral (and that instead, she just received a post-it note with the total amount owed), and that the itemized statement she eventually did receive contained a forgery of her signature.

FH responds by saying that it changed the obituary numerous times pursuant to the complainant's changing instructions but that she simply was never satisfied.

One example of the problems the FH encountered: Complainant at one point had told FH that her husband was a Medal of Honor recipient, which FH printed in at least one version of the obituary, after which it received several phone calls advising that the decedent in fact was not a Medal of Honor recipient.

FH says in its response that complainant repeatedly refused to take the time to go over the itemized statement, as she was in a hurry and, in the funeral director's opinion, quite difficult. The FH response says that the director went over the statement with her verbally and in person despite her objections to doing so, but that ultimately the complainant refused to take possession of the statement of goods despite his best efforts to give it to her.

Finally, FH's response states that the complainant refused to cooperate with the VA, which was involved because of her husband's military benefits. The director states that the VA officer would not help complainant without a signed statement of goods and services, which, as noted above, complainant refused to accept, according to the FH. The funeral director claims that, in a final effort to help the complainant and move the benefits process along, he signed her name to the statement himself.

The evidence in our possession suggests that this complainant was an uncooperative client who made the FH's job difficult. Nonetheless, failure to provide a client with an itemized statement of services is a violation, and such statement should be provided in writing and not just verbally. If the client refused to sign such statement, then the FH should not have done business with her.

Recommendation: Consent Order assessing a \$750 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

6. L05-FUN-RBS-2005024791

This complaint is the result of an inspector's notice of violation which alleges unlicensed practice. Specifically, it alleges that an unlicensed employee has been meeting with families and signing statements of services and goods, as well

as conducting at least one funeral. The FH's business cards inaccurately listed that individual as a funeral director. The FH states in its response that such individual no longer engages in funeral directing activities and that the matter has been corrected.

Recommendation: Consent Order assessing \$750 civil penalty.

A motion was made by Mr. Buckner to assess a \$1500 civil penalty.

Seconded by Mr. Cook

Adopted by voice vote

7. L05-FUN-RBS-2005024901

This complaint is the result of an inspector's notice of violation which alleges that social security numbers were not being entered on identification devices of decedents; that FH failed to provide the statutorily required crematory disclosures; and that FH's GPL contained several serious deficiencies. FH's response demonstrates that it took action to correct those deficiencies.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

8. L05-FUN-RBS-2005025121

This complaint is the result of an inspector's notice of violation which alleges that FH failed to provide the statutorily required crematory disclosures, that FH's cremation authorization forms were being signed by an unlicensed employee, and that a copy of FH's license was not on file in the office. The notice further alleged several pricing deficiencies, including failure to have alternative containers on GPL; failure to list price for forwarding of remains; and failure to list cloth-covered wood casket.

FH's response demonstrates that it took action to correct the authorization form and pricing deficiencies.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

9. L05-FUN-RBS-2005025321

This complaint is the result of an inspector's notice of violation which alleges several deficiencies in its General Price List. FH failed to make the corrections to its list in a timely manner, but it claimed in its response that the delay was in part the result of problems with the print shop to which it outsourced the work. It did eventually make the needed corrections.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

10. L05-FUN-RBS-2005025341

This complaint is the result of an inspector's notice of violation which alleges several deficiencies in its General Price List. FH failed to make the corrections to its list in a timely manner, but it claimed in its response that the delay was in part the result of problems with the print shop to which it outsourced the work. It did eventually make the needed corrections.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Cook

Adopted by voice vote

11. L05-FUN-RBS-2005025311

This complaint is the result of an inspector's notice of violation which alleges several deficiencies in its General Price List. FH failed to make the corrections to its list in a timely manner, but it claimed in its response that the delay was in part the result of problems with the print shop to which it outsourced the work. It did eventually make the needed corrections.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

12. L05-FUN-RBS-2005025131

This complaint is the result of an inspector's notice of violation which alleges that FH's statements of services and goods were not made available during the inspection, and that there were price discrepancies on FH's different price lists. FH's response demonstrates that it corrected the deficiencies, and FH claims that it subsequently had computer work done to better ensure that such clerical errors as being unable to access the statements of services and goods would not occur in the future.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Foster to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

13. L05-FUN-RBS-2005024651

This complaint is the result of an inspector's notice of violation which alleges that body in chapel at FH did not have proper identification device attached, that statement of services and goods was not made available to purchaser who had made arrangements for referenced body, and that FH failed to properly describe certain merchandise (casket and outer container) to purchaser prior to purchase. FH's response admits the violations but states that the deficiencies were corrected.

Recommendation: Consent Order assessing \$500 civil penalty.

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

14. L05-FUN-RBS-2005024611

This complaint is the result of an inspector's notice of violation which alleges failure of FH to register as a seller of pre-need contracts, price discrepancies on GPL, and failure to present CPL or OBCPL. Also, the notice alleged failure to make available two required licenses: an embalmer's license and a funeral

director's license. FH promptly notified Board staff of having corrected those deficiencies.

Recommendation: Consent Order assessing a \$500 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

15. L05-FUN-RBS-2005013761

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director for consistent and ongoing failure to administer death certificates in a timely manner. In 2003, the average time it took FH to file death certificates was 35.8 days after death. From October through December 2004, it took FH an average of 42.5 days to file death certificates. The Office of Vital Records noted that the average time it takes a FH to administer death certificates is 15 days. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.)

After having been sent two notices, Respondent still has not submitted a response to the complaint.

The Office of Vital Records sent an advisory letter to Respondent FH more than seven months before filing complaint, which letter included some techniques for improving efficiency.

Recommendation: Consent Order assessing a \$350 civil penalty.

A motion was made by Mr. Foster to assess a \$2,000 civil penalty.

Motion died for lack of second

A motion was made by Mr. Buckner to assess a \$1,000 civil penalty.

Seconded by Mr. Foster

Adopted by voice vote

16. L05-FUN-RBS-2005013711

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent FH for consistent and ongoing failure to administer death certificates in a timely manner. In 2003, the average time it took FH to file death certificates

was 49.9 days after death. From October through December 2004, it took FH an average of 31.9 days to file death certificates. The Office of Vital Records noted that the average time it takes a FH to administer death certificates is 15 days. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.)

In its response, FH admits to the delays but argues that there are mitigating factors, the biggest being physicians not signing the death certificates in a timely manner. Respondent has taken some proactive steps to address the problem, such as sending an employee to a training class on the death certificate process.

The Office of Vital Records sent an advisory letter to Respondent FH more than seven months before filing complaint, which letter included some techniques for improving efficiency.

Recommendation: Consent Order assessing a \$250 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation

Seconded by Mr. Cook

Adopted by voice vote

17. L05-FUN-RBS-2005019141

Complainant's father passed away and his services were handled by Respondent FH pursuant to a pre-need contract decedent had purchased in 1982. Complainant alleges that she was overcharged for funeral services in that she was required to purchase a vault that was not required on the pre-need contract, and that she was assessed a governmental regulatory charge as well as charges incurred by FH in picking up her father's body.

In its response, FH concedes that complainant was charged for a vault and some other services that were not on the original pre-need arrangement, but it claims that those additional charges were all necessary and legitimate. It asserts that the cemetery at which decedent was buried did not in 1982 require a vault, whereas it does now. The FH also claims that complainant's check for travel expenses covered air fare (in transporting remains from Indiana to Knoxville) but did not cover additional mileage incurred by FH in retrieving the body from Knoxville by car and transporting it back to FH, which was a five to six hour round trip. The evidence in our possession suggests that the complaint stems from Complainant's misunderstanding about the limits of pre-need insurance coverage and confusion about other factual and insurance matters. That said, the charge for a governmental regulatory fee is not authorized by the FTC regulations and should not have been assessed.

Recommendation: Consent Order assessing a \$250 civil penalty.

A motion was made by Mr. Buckner to table this complaint until next meeting.

Seconded by Mr. Foster

Adopted by voice vote

18. L05-FUN-RBS-2005025231

Complainant is daughter of elderly lady who passed away. The decedent had pre-need policy purchased sixty-one years ago with an insurance company that subsequently sold the policy to a different insurance company, which company has an agreement with Respondent FH. Complaint alleged that Respondent FH failed to honor terms of the pre-need policy in that not all the services were covered, and Complainant had to pay some \$2,328 out of pocket (the policy having covered the rest of the \$5783 total cost), including a governmental regulatory charge. In its response, FH advises that, despite its best efforts to explain things, policy holder simply had not understood the fact that policies purchased a long time ago do not necessarily cover all expenses for the services which are attendant to a modern funeral.

The complaint itself includes a bulletin put out by Respondent FH which explains to customers that certain items may not be covered by old policies. The evidence suggests that Complainant had a copy of that bulletin, which supports the conclusion that the complaint stems from Complainant's misunderstanding about the limits of pre-need insurance coverage and confusion about other factual and insurance matters.

That said, the charge for a governmental regulatory fee is not authorized by the FTC regulations and should not have been assessed. (I note that our file materials do not contain a contract, but we have in our possession another contract from this FH that details exactly the type of assessment this Complainant claims to have been charged. This claim therefore evinces a pattern on the part of this FH.)

Recommendation: Consent Order assessing a \$250 civil penalty.

A motion was made by Mr. Buckner to table this complaint until next meeting.

Seconded by Mr. Foster

Adopted by voice vote

19. L05-FUN-RBS-2005025411

This complaint is the result of an inspector's notice of violation which alleges that FH was not managed by a licensed funeral director, that it did not have a license of each funeral director available, and that FH failed to register to engage in pre-need sales.

FH's response demonstrates that it promptly took corrective action, in part by designating a funeral director to manage the establishment. In its response, FH stated that the location at issue only serves as a chapel, and that all pre-need and other arrangements are made at a different establishment owned by the same company.

Recommendation: Consent Order assessing a \$250 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

20. Case No. L05-FUN-RBS-2005025291

This complaint is the result of an inspector's notice of violation which alleges that FH failed to provide the statutorily required crematory disclosures. Random samples of FH's files revealed that its crematory disclosures did not include the name, address or phone number of the crematory. The notice also alleges that FH used same price listed on its general price list for direct cremation if the purchaser provides the container as is listed if the container is purchased from the FH. That practice violates FTC requirements.

In its response, FH says that the incomplete disclosures were the result of its using old Cremation Authorization forms which it no longer uses, and that it has corrected the alleged General Price List violation.

Recommendation: Consent Order assessing a \$250 civil penalty.

A motion was made by Mr. Foster to accept counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

21. L05-FUN-RBS-2005024961

This complaint is the result of an inspector's notice of violation which alleges that FH's General Price List was in violation of several FTC requirements and that FD's license was not on file at the establishment. Respondent FH immediately

made corrections on its GPL and mailed Board staff and placed in its files a copy of the FD's license.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

22. L05-FUN-RBS-2005025261

This complaint is the result of an inspector's notice of violation which alleges that FH was failing to retain a copy of cremation authorizations and to provide such copies to the authorizing agents. Notice also alleges that GPL improperly listed a higher price when the purchaser provides a container for direct cremation. Also, FH's license was not immediately available for inspection, but was provided after a brief delay. FH's response demonstrates that it took corrective action.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Cook

Adopted by voice vote

23. L05-FUN-RBS-2005024891

This complaint is the result of an inspector's notice of violation which alleges that FH did not have available the licenses for its establishment, its funeral director, or its embalmer. Notice also alleges that required disclosures were not on crematory authorization form, and that such form was signed by a witness rather than by the funeral director.

In its response, FH states that licenses are available but that persons with such knowledge had been out at a funeral service at the time of inspection. FH also said that it was using an old authorization for cremation form that (it claims) had been approved by the Board, but that it has since updated its forms to include the required information.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

24. L05-FUN-RBS-2005025271

This complaint is the result of an inspector's notice of violation which alleges that FH did not have available the manager's funeral director or embalmer's licenses, and that someone other than the manager (but who was licensed as a funeral director and embalmer) had been signing statements of goods and services on the FH's behalf.

FH states in its response that such individual – the person who had been signing the records for the FH and who is properly licensed – has now formally been named the FH's manager.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Ms. Hellum to accept counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

25. L05-FUN-RBS-2005024921

This complaint is the result of an inspector's notice of violation which alleges that FH's GPL contained price discrepancies, that required items were not on the casket price list, and that required disclosures were not on crematory authorization form. FH's response demonstrates that it promptly took corrective action by amending and providing Board staff with a copy of its GPL.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Murphy to accept counsel's recommendation.

Seconded by Mr. Cook

Adopted by voice vote

26. L05-FUN-RBS-2005024741

This complaint is the result of an inspector's notice of violation which alleges pricing discrepancies and an incomplete CPL. Notice also alleges that several statements of services and goods do not reflect the reason for embalming. FH's response demonstrates that it promptly took corrective action by amending and providing Board staff with a copy of its price lists.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

27. L05-FUN-RBS-2005006101

The Board at its April 2005 meeting assessed a civil penalty of \$3,000 against Respondent FH in this case. It is back before the Board for reconsideration because of a new development which is addressed below.

Complainant was wife of deceased. FH measured opening of crypt (which crypt was in a mausoleum owned by FH) and determined that it was large enough to accommodate oversize casket of deceased. However, at funeral itself it was discovered – too late – that the casket was too large to be placed into crypt. Family and friends were present, and Complainant was embarrassed when casket would not fit into crypt. Casket was placed back into hearse, and, because of logistical problems involved in securing an appropriate new casket and various communications problems between FH and Complainant, eventual interment service was not held until three days later.

Subsequent to mailing out the Consent Order, we received a letter from Complainant stating unequivocally that the matter has been resolved to her satisfaction and that she does not wish for the complaint to go forward. In light of that new development, which evidences unilateral remedial action on the part of Respondent FH, it is my belief that the public interest has largely been met and that the particular circumstances are unique, and accordingly it is my recommendation that the Board revisit this matter and assess a lower civil penalty.

Recommendation: Vote to rescind civil penalty and then to assess a new civil penalty in the amount of \$250.

A motion was made by Mr. Murphy to dismiss complaint.

Seconded by Ms. Hllum

Adopted by voice vote

28. L05-FUN-RBS-2005024941

This complaint is the result of an inspector's notice of violation which alleges unlicensed practice. Specifically, it alleges that three unlicensed individuals work

at the home at respective set periods each week without a licensed funeral director present. The FH states in its response that it had allowed those unlicensed individuals to man the establishment only as a convenience to the residents of the small town in which the FH is located, and that only the funeral director himself ever handled arrangements. In any event, the FH promptly changed its practice and hired a new licensed FD. Finally, it advised that the establishment would be closed as of July 15, 2005 and from that time only operate as a satellite chapel.

Recommendation: Consent Order assessing \$250 civil penalty.

A motion was made by Mr. Buckner to accept counsel's recommendation.

Motion died for lack of second

A motion was made by Mr. Cook to dismiss complaint.

Seconded by Mr. Foster

Adopted by voice vote

29. L05-FUN-RBS-2005024871

This complaint is the result of an inspector's notice of violation which alleges that FH did not make licensure certificates available. Respondent says that the licenses were not sent to him after he moved residences. He since has obtained them.

Recommendation: Consent Order assessing \$150 civil penalty.

A motion was made by Ms. Hellum to dismiss complaint.

Motion died for lack of second

A motion was made by Mr. Buckner to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote with one (1) opposing vote by Ms. Hellum

30. L05-FUN-RBS-2005024701

This complaint is the result of an inspector's notice of violation which alleges that FH improperly charged fee for "use of facilities and equipment for arrangement conference, care, custody and sheltering of remains." FH's response

demonstrates that it promptly took corrective action by amending and providing Board staff with a copy of its GPL.

Recommendation: Letter of Warning.

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

31. L05-FUN-RBS-2005024991

This complaint is the result of an inspector's notice of violation which alleges that FH's GPL and CPL contained price discrepancies, that one embalmer's license was not available for inspection, and that FH was late in registering to sell pre-need contracts. The FH has since paid the registration fee in full and its response demonstrates that it promptly took corrective action by amending and providing Board staff with a copy of its price lists. The manager advised that he was away on military duty and that in his absence the temporary employee had not known where to find the referenced license.

Recommendation: Letter of Warning.

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

32. L05-FUN-RBS-2005014731

Complainant makes several allegations against Respondent FH regarding funeral services of his wife: He alleges that he was overcharged by \$1,535. He also alleges that FH failed to include wife's photograph in her obituary, that FH failed to provide a family car for the service, and that FH staff rushed him at the service. He also alleges that FH neglected certain service details, such as failing to direct guests at the visitation and failing to put out the guest book before the funeral service began. Finally, complainant alleges that his wife's body was embalmed improperly, resulting in her face and neck being swollen.

FH denies all allegations of wrongdoing, noting that it agreed to honor complainant's 1995 pre-need contract with another FH at a substantial loss. FH claims that the discount it provided for these services totaled over \$7000. The Statements of Funeral Goods and Services of the respective FHs – Respondent

FH and the FH from which it took over the pre-need contract – support Respondent FH's contention of substantial discounts, and even its contention that it provided these services at a loss. (For example, Respondent FH's service charges are \$4995 whereas those of other FH are \$1795, which resulted in Respondent FH discounting those services by \$3200 according to its price list.)

As to other allegations: Respondent FH points out – and complainant admits – that it ran a second obituary the very next day which did include a photograph of complainant's wife. FH asserts that it did not provide direction to guests at visitation because visitation was held at a church which handles the flowers, gifts and guests itself. FH denies that guest book was put out late at the funeral, and indeed it claims that there were two guest books – one at the visitation and one at the main church. It also denies rushing Complainant, saying he was treated the same as the FH treats all its clients.

In sum, it appears as if this Complainant, an elderly man, does not understand the fact that Respondent FH, which has substantially higher prices than did the predecessor FH with which he signed the pre-need contract, was honoring that contract to its own financial detriment. (He was put on notice of those prices before switching the contract over to Respondent.) It further appears that Complainant, in his grief, simply was not satisfied with the reasonable and appropriate services that were provided by Respondent FH.

The evidence in our possession does not suggest any violations, but the facts indicate that FH would be well advised to do a better job of communicating about any changes that might occur when a transfer of pre-need contract takes place.

Recommendation: Letter of Warning.

A motion was made by Ms. Hellum to accept counsel's recommendation.

Seconded by Mr. Cook

Adopted by voice vote

33. L05-FUN-RBS-2005016671

Complainant sold merchandise to family and alleged that director of Respondent FH, which was conducting the funeral service, "overstepped his bounds" by asking the entire family to view the casket they had purchased through his, Complainant's company, prior to the service. Complainant claims that such inspection caused the family an "unreasonable emotional burden."

Respondent FH's response includes letter from family member saying that it was she – and not Respondent FH – who had requested that her fellow family members view the casket. She states that the funeral director behaved

professionally and in no way caused the family unreasonable emotional distress. The complaint is without merit.

Recommendation: Dismiss.

A motion was made by Mr. Cook to accept counsel's recommendation.

Seconded by Mr. Murphy

Adopted by voice vote

34. L05-FUN-RBS-2005021781

This complaint involves alleged commingling of fetal cremains with those of one or more adults. Respondent FH outsourced the cremation to a different funeral home, and the evidence in our possession suggests that this Respondent had nothing to do with the alleged commingling.

Recommendation: Dismiss.

A motion was made by Mr. Murphy to table this complaint.

Seconded by Mr. Buckner

Adopted by voice vote

After the Legal Report, President Arrington gave a ten minute recess. The Board meeting reconvened at 12:14 p.m. Mr. Buckner had to leave and was excused for the rest of the meeting.

STAFF REPORT:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

1. Request from National Funeral Directors Association -- Audio Conference

The office has received a request from Sandra Jeske, Meetings Specialist of the National Funeral Directors Association, asking for reconsideration by the Board in the matter of not approving telephone-based learning programs. Ms. Jeske indicated in her recent letter that in order to help ensure a licensee is actually participating, NFDA has the funeral home owner or manager attest on the sign-in sheet that their employees participated, and they also verify the sign-on sheet with their registration records and the conference center's call-in list.

A motion was made by Mr. Cook that audio conference learning programs be considered for approval for continuing education credit, the same as other submitted programs.

Seconded by Mr. Foster

Approved by voice vote

2. Closed Establishments

A. The office received a letter on June 29, 2005, from James W. (Billy) McCauley, the owner of McCauley Funeral Home, with locations at 10 Eldad Road in Fayetteville and 415 South High Street in Petersburg, stating that these establishments closed effective June 17, 2005, and the assets were sold to Gallant-Riverview Funeral Home, Inc., in Fayetteville, TN.

B. The office received a letter on July 7, 2005, from Douglas W. Raines, the manager of Hermitage Funeral Home, 535 Shute Lane, Old Hickory, stating that the crematory at this location closed effective July 5, 2005.

3. Board Opinion Requested

The issue is whether a funeral merchandise retailer's referral of their customer or potential customer to a licensed funeral establishment and/ or funeral director constitutes the "[m]aking of arrangements to provide for funeral services..." which, pursuant to Tennessee Code Annotated § 62-5-101(6)(A), would be the practice of funeral directing.

4. Manager Changes

There have been nine establishments changed their manager since the last board meeting.

5. Next Board Meeting

The Board will discuss the date for next board meeting. Due to some conflicts, it is suggested that consideration be given to a different date for the September meeting.

A motion was made by Mr. Murphy to schedule the next Board meeting for September 1, 2005, and, afterwards, a luncheon to honor the immediate Past President of the Board.

Seconded by Mr. Foster

Adopted by voice vote

A motion was made by Ms. Hellum to adjourn

Seconded by Mr. Foster

Adopted by voice vote

There being no further business, the meeting adjourned at 12:42 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble
Executive Director